IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2885 of 1995

VARDIDAS

V/S

SURAJ MAL & ORS

Mr. DILIP KAWADIA, for the appellant / petitioner

Mr. BR MEHTA, for the respondent

Mr. OP BOOB, A.G.A.

Date of Order : 16.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the judgment of the learned Board of Revenue dt. 4.5.1995 Annexure-5, and the mutation sanctioned by Nayab Tehsildar being Annexure-2, and has also prayed for removing the name of the respondent no. 1 from the revenue record, and for entering the name of the petitioner.

The facts of the case, as alleged in the writ petition are, that late Chetandas was real brother of petitioner's father Mohandas, and father of Chetandas and his sons used to write their surname as Balai. Then Chetandas and Mohandas are alleged to have adopted faith in Kabir Panthi Sampraday, and therefore, they started to write Sadhu Kabir Panthi in place of their caste Balai.

However, marriages took place in the caste Balai. Then, it is alleged, that Chetandas had sold land in dispute being Khasra no. 768, 1352, 1351/1513 to the respondent no. 1, who is by caste Brahmin, by registered sale deed. This registered sale deed is produced as Annexure-1 dt. 5.1.79. It is alleged that Chetandas died issue less, and that his wife contacted nata marriage elsewhere during lifetime of Chetadas. However, the petitioner learnt about sale only after Chetandas died, and mutation was sanctioned on 15.3.87. Against which an appeal was preferred, which was accepted, finding Chetandas to be member of Scheduled Caste, and relying upon the certificate issued by the competent authority Tehsildar, and consequently cancelling the mutation. At the same time the appellate authority also directed disciplinary proceedings to be initiated against Patwari, Inspector of the Land Revenue, and Nayab Tehsildar, who ignored the aspect of seller being of scheduled caste. Then, further appeal against the said order also failed. These are orders Annexures-3 and 4. A further revision was filed before the learned Board of Revenue, which came to be allowed vide Annexure-5. It was interalia found by the learned Board of Revenue, that there is no evidence on record of the subordinate Courts, to show that Chetandas was belonging to Balai caste, rather he was recorded as Kabir Panthi Sadhu in the revenue record, and the followers of Kabir Panth do not believe in castism, and therefore, it cannot be said that Chetandas was belonging

to Scheduled Caste. The petitioner has produced Annexure-6 being the Parcha Khatoni of Samvat 2003, which is recorded in the name of Narsingh s/o Bagadi Ram, showing Narsingh to be Balai, and also produced judgment Annexure-7, which is dated 22.11.1984, wherein the transfer made in favour of Mohandas by Tarachand came to be assailed on the ground that Mohandas is not a member of Scheduled Caste, while the seller was, and by this judgment Annexure-7 it was found, that both are Balai, and both belong to scheduled caste, and therefore, application under Section 175 of the Rajasthan Tenancy Act was dismissed. With these facts impugned orders Annexure-2 and Annexure-5 are challenged, interalia on the ground, that merely because the petitioner's ancestors followed the beliefs of Kabir Panth, it cannot be said that he ceased to be Balai, and the bar of Section 42 of the Rajasthan Tenancy Act very much survived, and that the sale was void. Then, it was contended that there was a caste certificate produced on record, about Chetandas, and it is not in dispute that petitioner's father was his real brother, therefore, it is clear that the petitioner belongs to Scheduled Caste, and the mutation entered is contrary to the provisions of law, and cannot be allowed to survive. Interalia on these grounds it is prayed that Annexures- 2 and 5 be quashed.

Reply has been filed on behalf of purchaser private respondent, contending interalia, that Chetandas

had renounced his community, and became Kabir Panthi Sadhu much before the commencement of the Rajasthan Tenancy Act, the land was recorded in the Jamabandi in the name of Chetandas Kabir Panthi Sadhu, and since he had renounced the community much before the Act, rigor of Section 42 is not applicable. It was contended, that the learned Board of Revenue rightly held, that Kabir Panthi Sadhu or Baba have not been included in the Scheduled Caste. Then, certain tenets of Kabir Panth were referred. Then, a plea was taken that the petitioner has no locus standi. Interalia with these averments it was prayed, that the writ petition be dismissed.

Arguing the writ petition, it was contended by the learned counsel for the petitioner, that there is ample material on record of the learned courts below, including certificate issued by the competent authority to show, that the petitioner belongs to Balai community, and is thus a member of Scheduled Caste, and since there is nothing on record to controvert this, the impugned order of the learned Board of Revenue is bad. It was maintained, that the burden is on the person, who alleges the conversion from Scheduled Caste to any other community, to lead positive cogent and reliable evidence, to prove the fact of conversion; while in the present case the respondents are only relying upon the recital in the revenue record as Kabir Panthi. As against this record includes the earlier

revenue record, which clearly recited the petitioner as Balai, member of scheduled caste. Thus, the judgment of the learned Board of Revenue is vitiated.

On the other hand, learned counsel for the respondent maintained, that the petitioner's ancestors had renounced the Balai community, and adopted the Kabir Panth, and had become ascetic, renouncing the whole world. It was maintained, that Kabir Panthi Sadhu did not believe in castism, and therefore, having once adopted Kabir Panth, it is not open to the petitioner to fall back upon to allege birth caste, and invoke the provisions of Section 42. It was also submitted, that in the alternative even if it is found, that the petitioner belong to Balai community, even in that event, the matter cannot be allowed to rest on setting aside the mutation, rather even in that event, the proceedings are required to be initiated under Section 175 of the Rajasthan Tenancy Act, as since the petitioner alleges the alienation to be in violation of Section 42, the consequences enumerated in Section 175 would flow, and the petitioner cannot be allowed to claim, unreasonable, and illogical advantage, of his having sold the land in question to the non-petitioner.

I have considered the submissions, and have gone through the papers available. It is true that since the litigation arises from the proceedings of mutation, against

which an appeal was filed, obviously regular enquiry was not held by any of the courts below, on the question, as to whether the seller Chetandas belonged to scheduled caste, or not, and the appellate authorities examined the question on the basis of the caste certificate produced by the petitioner, while the learned Board of Revenue considered surname used by the seller, being Kabir Panthi. In that view of the matter, at one point I suggested the learned counsel for the petitioner, that the matter may be remanded back to the learned trial court, with a direction to hold proper enquiry about the petitioner's caste, within the restricted framework, permitted by the Constitution, but then the learned counsel maintained, that there is enough material on record, to enable this Court to come to the conclusion, on lines, as the petitioner wants, and the learned counsel referred and relied upon the findings given by the learned S.D.O. in Annexure-3, where he had considered the material available on record, including certificate issued by the Tehsildar, who is the competent authority, and found, that from the material available on record it is undisputedly clear that Chetandas was a member of Scheduled Caste. However, in view of Chetandas having been described as Kabir Panthi in the revenue record, respondent got the land transferred, and in absence of anything being there on record to show, that material relied upon by the learned S.D.O. does not exist on record, the matter need not be sent for re-enquiry. On the other

hand, learned counsel for the respondent strongly banks upon the description of Chetandas as Kabir Panthi, as mentioned in the revenue record. In that view of the matter, I may venture to concentrate, on the question, as to whether the petitioner is a member of Scheduled Caste, or not. In that regard from Annexure-7, it does prima facie appear, that the question of the petitioner being belonging to Scheduled Caste, or not, did arise in that litigation, though on different facts, and between different parties, and it was found that the petitioner belongs to Scheduled Caste. Then, the petitioner has also produced certificate of the competent authority, certifying the petitioner to be belonging to Scheduled Caste. As against this, there is no material placed on record, whether of the learned courts below, or even before this Court, even to show, that the petitioner does not belong to Scheduled Caste, except placing reliance on description of Chetandas in the revenue record, describing him as Kabir Panthi Sadhu.

In my view, even if Chetandas was described as Kabir Panthi in the revenue record, that would not militate against attracting of the bar of Section 42, inasmuch as the embargo created by Section 42 is, on the basis of birth mark, the caste, and mere adoption of a particular philosophy, being Kabir Panth, which by itself is neither caste nor religion, it cannot be said, that even if the seller started professing the faith of Kabir Panth, the

rigor of Section 42 would not be attracted. In that view of the matter, in my view, the order of the learned Board of Revenue being Annexure-5, cannot be sustained.

The matter does not end here, inasmuch as a look at Annexure-3 shows, that the learned S.D.O., while examining the situation, had clearly directed initiation of disciplinary proceedings against the then Patwari, Record Inspector, and Nayab Tehsildar, it is not shown as to what has been the outcome thereof, but then it is clear, that the sale was hit by Section 42. In my view that being the position, the consequence contemplated by Section 175 of the Rajasthan Tenancy Act are very much attracted, and as appears from Annexure-7, that petitioner's real father was also very much aware of the rigor, and consequences of Section 175.

In these circumstances, in the totality, while setting aside the order of the learned Board of Revenue being Annexure-5, I also think it appropriate to direct the Land Holder, who is represented by Mr. Boob, to initiate proceedings under Section 175 of the Rajasthan Tenancy Act at the earliest, and carry them to logical conclusion.

The writ petition is accordingly allowed with the aforesaid additional direction.

(N P GUPTA),J.

/Sushil/